

## United States Postal Service

## § 320.6

of this chapter is suspended on all post routes for documents, sent by a shipper or an ocean carrier from a foreign origin to a United States ocean-carrier port city destination or from a United States ocean-carrier port city origin to a foreign destination, that would be excepted under §310.3(a) if the documents accompanied the cargo. This suspension covers only shipments to or from ports where the cargo to which the documents relate is actually loaded on, or unloaded from, an ocean vessel. For purposes of this suspension “foreign origins” or “foreign destinations” means origins or destinations outside the contiguous 48 states.

[44 FR 52835, Sept 11, 1979]

### § 320.6 Suspension for extremely urgent letters.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and §310.2(b) (1) through (6) of this chapter is suspended on all post routes for extremely urgent letters if the conditions of either paragraph (b) or (c) of this section, and of the other paragraphs of this section, are met.

(b)(1) For letters dispatched within 50 miles of the intended destination, delivery of those dispatched by noon must be completed within 6 hours or by the close of the addressee's normal business hours that day, whichever is later, and delivery of those dispatched after noon and before midnight must be completed by 10 A.M. of the addressee's next business day. For other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day. The suspension is available only if the value or usefulness of the letter would be lost or greatly diminished if it is not delivered within these time limits. For any part of a shipment of letters to qualify under this paragraph (b), each of the letters must be extremely urgent.

(2) Letters sent from the 48 contiguous states of the United States to other jurisdictions of the United States or to other nations are deemed “delivered” when they are in the custody of the international or overseas carrier at its last scheduled point of departure from the 48 contiguous states. Letters sent from other jurisdictions of the United States or from other nations

into the 48 contiguous states are deemed “dispatched” when they are in the custody of the domestic carrier, having been passed by United States Customs, if applicable, at the letters' point of arrival in the 48 contiguous states.

(3) Except as provided in this paragraph (b)(3), the times and time limits specified in paragraph (b)(1) of this section are not applicable to any locations outside the 48 contiguous states. The times and time limits specified in paragraph (b)(1) of this section are applicable to letters dispatched and delivered wholly within Alaska, Hawaii, Puerto Rico or a territory or possession of the United States. The regulations provided in paragraph (b)(2) of this section relating to the delivery and dispatch of letters are applicable by analogy to letters shipped between these jurisdictions and other nations.

(c) It will be conclusively presumed that a letter is extremely urgent and is covered by the suspension if the amount paid for private carriage of the letter is at least three dollars or twice the applicable U.S. postage for First-Class Mail (including priority mail) whichever is the greater. If a single shipment consists of a number of letters that are picked up together at a single origin and delivered together to a single destination, the applicable U.S. postage may be computed for purposes of this paragraph as though the shipment constituted a single letter of the weight of the shipment. If not actually charged on a letter-by-letter or shipment-by-shipment basis, the amount paid may be computed for purposes of this paragraph on the basis of the carrier's actual charge divided by a *bona fide* estimate of the average number of letters or shipments during the period covered by the carrier's actual charge.

(d) The sender must prominently mark the outside covers or containers of letters carried under this suspension with the words “Extremely Urgent” or “Private Carriage Authorized by Postal Regulations (39 CFR 320.6)” or with a similar legend identifying the letters as carried pursuant to this suspension. In addition, each outside container or cover must show the name and address

of the carrier, and the name and address of the addressee. Carrier records must be sufficient to show that the delivery of the letters was completed within the applicable time limitations, if carried under the authority of paragraph (b) of this section, and must be made available for inspection at the request of the Postal Service. The required records may be either in the form of notations on the containers or covers of any letters asserted to be carried under this suspension, or in the form of records kept by employees of the actual times they pick up and deliver such materials.

(e) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in Part 959 of this chapter. The period of the revocation may be reduced or be extended for not to exceed one additional year by the Judicial Officer, depending on such mitigating or aggravating factors as the extent of the postal revenue lost because of the violation and the presence or absence of good faith error or of previous violations. The failure of a shipper or carrier to cooperate with an authorized inspection or audit conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (e) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

(f) The following examples illustrate the application of this suspension.

*Example (1).* The headquarters of a city police department each night compiles a list of the license plate numbers and descriptions of automobiles reported stolen within the metropolitan area during the previous 24 hours.

This list is delivered by 7 a.m. the following day to each of the local precinct offices located throughout the city. By 9 a.m. that day, the list is circulated for use by law enforcement units operating from each office. Effective police recovery of stolen vehicles depends upon having this information handed out in written form to all units on at least a daily basis. The private carriage of these lists would qualify under the test set in paragraph (b) of this section.

*Example (2).* The same police department headquarters also from time to time distributes memoranda advising the local precinct officers on departmental policy and vacation schedules, and responding to inquiries from the local precinct offices. Nothing substantial turns on whether these memoranda arrive by midnight or by 10 a.m. of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these memoranda would not qualify under the test set out in paragraph (b) of this section.

*Example (3).* A health maintenance organization (HMO) operating its own hospital, clinics, and medical laboratory daily sends test samples and specimens from the HMO's hospital and clinics to its medical laboratory in a different location for immediate analysis. In return, the HMO laboratory sends to the HMO's hospital and clinics the laboratory reports for these samples and specimens on the day the reports are completed. The reports are then promptly utilized by the hospital and clinics as part of regular diagnostic procedures. The private carriage of these reports would qualify under the loss-of-value test set out in paragraph (b) of this section.

*Example (4).* The same HMO's hospital and clinics send requisitions and invoices to the HMO's central office as the need arises for the ordering of and payment for goods and services, which are handled centrally. Every other Friday, the central office sends to the hospital and clinics reports and memoranda on expenditures for personnel, supplies, utilities, and other goods and services. Nothing substantial turns on whether these materials arrive the same day or by 10 a.m. of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

*Example (5).* On Sunday, Tuesday, and Thursday evenings, the central office of a regional grocery store chain sends out to its various stores in the area inventory bulletins prepared over the previous 24 hours showing the current availability and prices of meat, produce, dairy products, breadstuffs, frozen foods and similar items. Early the following afternoon, each store must send these inventory bulletins back to the central office with a notation of the

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store's orders to assure that the central office can ship sufficient supplies of such items for sale by the store on its next business day. The private carriage of these bulletins would qualify under the test set out in paragraph (b) of this section.

*Example (6).* On Sunday, Tuesday, and Thursday evenings, the central office of a different regional grocery chain sends out to its various stores in the area inventory bulletins showing the current availability and prices of meat, produce, dairy products, breadstuffs, frozen foods and similar items. Early in the afternoon of the second day following receipt of the bulletins, each store sends the bulletins back to the central office so that supplies of such items may be shipped to the store four days later. Nothing substantial turns on whether these bulletins arrive within 12 hours or by noon of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

*Example (7).* The headquarters office of a large bank each business day prepares and sends to its branch offices lists showing current foreign exchange rates and similar information that must be updated and distributed to the branches on a daily basis in order for the bank to avoid the risk of serious financial loss. Within three hours of their receipt by each branch office, these lists are circulated and utilized by officials of the branch office in conducting regular banking procedures involving the use of such lists. The private carriage of these lists would qualify under the test set out in paragraph (b) of this section.

*Example (8).* The field office of an insurance company daily sends the insurance applications it has taken in that day to the company's central office. The applications are bound (i.e., constitute evidence of insurance) for 30 days, but may be canceled by the company. Few if any policies have been canceled by the company within 48 hours of their receipt at the central office, though the company normally begins processing the applications soon after their receipt. Nothing substantial turns on whether these bound applications arrive within 12 hours or by noon of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

*Example (9).* An organization of real estate brokers in a community issues periodic bulletins containing information about properties which have been listed for sale by the constituent brokers. Each broker is entitled to show the properties to prospective buyers. In order to provide each broker with substantially equal opportunity to secure a buyer, it is necessary that the bulletins be

delivered on the same day and within the shortest time span within that day. The bulletins constitute the basic source of information for the brokers and delivery in the foregoing manner is a key element in the functioning of the brokers. The private carriage of the bulletins would therefore qualify under the test set out in paragraph (b) of this section.

*Example (10).* The same organization distributes memoranda regarding speakers at real estate seminars, sales figures for a given period, and other information of significance and interest to real estate brokers but which does not affect their competitive positions. A failure to make simultaneous or near simultaneous delivery to the brokers, or a failure to make delivery within a specified period of time, has no material bearing upon the day-to-day operations of the brokers and private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

[44 FR 61181, Oct. 24, 1979]

### § 320.7 Suspension for advertisements accompanying parcels or periodicals.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for advertisements enclosed with merchandise in parcels or accompanying periodicals under the following circumstances:

(1) The advertisements must not be marked with the names or addresses of the intended recipients.

(2) The advertisements must be incidental to the shipment of the merchandise or the periodical.

(i) An advertisement is incidental to the shipment of the accompanying merchandise or the periodical when the merchandise or the periodical has been ordered by or would otherwise be sent to the recipient even without the accompanying advertisement.

(ii) Notwithstanding § 320.7(a)(2)(i), an advertisement is not incidental to the merchandise when the pertinent circumstances, such as the nominal value of the merchandise, its shipment on an unsolicited basis, or its status as a sample, reasonably indicate that the shipper's primary purpose is the conveyance of the advertisement itself and that the merchandise is merely an adjunct to the advertisement.

(b) An item is an advertisement if its primary purpose is to cause or induce